

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20541

In the Matter of:

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
(Cambridge and St. Michaels, MD)

)  
)  
)  
) MM Docket No. 92-291  
) RM-8133  
)

To: The Chief, Mass Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Prettyman Broadcasting Company, Inc., licensee of Station WICO-FM, Salisbury, Maryland ("Prettyman"), by its attorneys, hereby opposes the Petition for Reconsideration filed July 19, 1994 by CWA Broadcasting, Inc. ("CWA"). CWA cannot justify the reallocation of Channel 232A from Cambridge to St. Michaels, Maryland under Commission precedent and the public interest standard. Moreover, CWA fails to demonstrate why reconsideration is appropriate in this case.

**Background**

The background of this proceeding has been laboriously repeated in previous pleadings.<sup>1/</sup> For the sake of brevity, the following brief summary is provided. Following an FCC comparative hearing, CWA received a permit for an

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<sup>1/</sup> Prettyman reincorporates by reference its previous comments in this docket.

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FM Station on Channel 232A, Cambridge, Maryland. The Administrative Law Judge cited three reasons for awarding CWA the permit over its six competitors: (1) 100% integration; (2) minority ownership; and (3) community activity. CWA petitioned the Commission to reallocate the channel assigned to its unbuilt facility, Channel 232A, to St. Michaels, Maryland. The Commission dismissed CWA's Petition in Report and Order, MM Docket No. 92-291 (released June 17, 1994).

#### The Commission Rightly Decided Against the Reallocation

Under established Commission precedent, CWA bore the burden of proving a negative -- that it had not "received in a comparative hearing a decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community."<sup>2/</sup> CWA could not meet its burden -- the preference it received was decisionally significant. Thus, CWA now belatedly attempts to bolster support for changing the community of license by arguing that one issue -- "community activity" -- was not "decisionally significant." Alternatively, CWA argues for a credit for "community activity" in its now-proposed location. Both arguments are without merit.

First, the "community activity" preference that helped CWA secure the construction permit was related to the Cambridge community. The comparative hearing reduced the competing applicants to two: Mr. Robert L. Purcell, a broadcast engineer, who had previously owned interests in broadcast

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<sup>2/</sup> Report and Order, MM Docket No. 92-291, June 17, 1994.

stations in other communities and in Pocomoke City, Maryland; and Mr. Charles W. Adams, Jr., a radio announcer and personality, who is black, and "claims to have participated in civic activities in the service area."<sup>3/</sup> Both of these applicants were granted integration credit. Yet, in awarding the permit to CWA, the ALJ made it clear that the difference between Mr. Adams and Mr. Purcell was minority status and "past civic activities within the service area."<sup>4/</sup> CWA's preference in the comparative hearing was directly connected to the civic activities asserted for the service area it now seeks to abandon.

Second, CWA cannot demonstrate that it would have received a "community activity" preference had the comparative hearing been for a channel at St. Michaels. CWA had no documented involvement in civic activities in St. Michaels, but argues that one of the activities credited in the Cambridge comparative proceeding falls within the 1 mV/m contour of a proposed St. Michaels operation. CWA's paltry showing is insufficient to support the reallocation.

Finally, there is no valid public interest argument justifying a reversal of the instant decision or the Commission's basic comparative hearing policies. CWA does not demonstrate why the Commission should alter its determination that a second local FM service in Cambridge is in the public

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3/ Initial Decision, 4 FCC Rcd 6481, 6484-85, ¶¶ 28-30.

4/ See Big Bay Broadcasting, 4 FCC Rcd 4676, 4686 (1989).

interest, particularly since CWA seeks to move from Cambridge to a significantly smaller community that is already well-served.

#### CWA Fails To Meet The Commission's Standards For Reconsideration

The Commission's standard for reconsideration is clear.<sup>5/</sup> CWA has shown no material Commission error or omission that would alter its decision not to reallocate Channel 232A from Cambridge to St. Michaels. Instead, CWA attempts to convince the Commission that the communities are interchangeable for purposes of reallocating Channel 232A. Yet, the communities are not interchangeable -- CWA received its construction permit, in part, because of its nexus with the community of Cambridge. Thus, reconsideration is inappropriate.

Moreover, CWA's Petition fails under Section 1.106(b)(2) and (c) of the Commission's Rules.<sup>6/</sup> CWA now tries to address the central issue it failed to address in its original request for reallocation: why it should be permitted to

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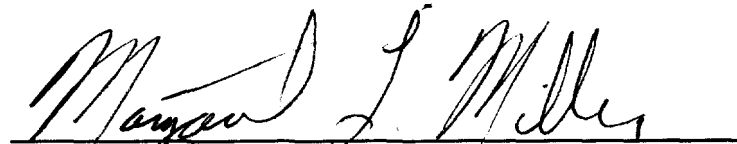
<sup>5/</sup> "Reconsideration is appropriate only where the petitioner has shown 'manifest error or omissions so material that their correction will result in substantial alteration of the original decision.' [citations omitted]. Thus, reconsideration 'will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken." Rio Grande Broadcasting Co., 8 FCC Rcd 8726 (1993).

<sup>6/</sup> "A petition for reconsideration which relies on facts not previously presented may be granted only if the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or if the petition relies on facts unknown to petitioner until after his last opportunity to present such matters; or if this Commission determines that consideration of the facts relied on is required in the public interest." RCA American Communications, Inc., 3 FCC Rcd 1184 (1988)

reallocate Channel 232A to St. Michaels when its permit was granted based on its community activity in Cambridge. There are no new facts or changed circumstances; petitioner simply cannot meet its burden of showing that the reallocation will not subvert the comparative process.

For all of these reasons, CWA's Petition for Reconsideration should be rejected.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Margaret L. Miller", is written over a horizontal line.

Margaret L. Miller

Mark I. Lloyd

Counsel for Prettyman Broadcasting Company, Inc.

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August 1, 1994

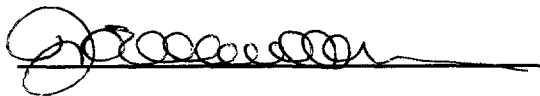
**CERTIFICATE OF SERVICE**

I, Jo Ellen Walker, a secretary at Dow, Lohnes & Albertson, do hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was either hand-delivered or mailed, postage prepaid by first class United States mail, this 1st day of August, 1994, to the following:

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A handwritten signature in black ink, appearing to read "Jo Ellen Walker", is written over a horizontal line.

\*By Hand Delivery